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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Applications of)	MM Docket No. 93-94
)	
Scripps Howard Broadcasting)	FCC File No. BRCT-910603KX
Company)	
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
Four Jacks Broadcasting, Inc.)	FCC File No. BPCT-910903KE
)	
For a Construction Permit)	
For a New Television)	
Facility on Channel 2 in)	
Baltimore, Maryland)	

TO: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

**ERRATUM TO PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW SUBMITTED BY
SCRIPPS HOWARD BROADCASTING COMPANY**

Scripps Howard Broadcasting Company ("Scripps Howard"), through counsel, hereby requests that the following citation corrections be made to its Proposed Findings of Fact and Conclusions of Law for Misrepresentation Issues Against Scripps Howard Broadcasting Company and Four Jacks Broadcasting, Inc., submitted on December 23, 1994:

- The citations to Swan Creek Communications, Inc. v. FCC, 1994 U.S. App. Lexis 33055 (D.C. Cir. Nov. 22, 1994), are to the page numbers referenced in the upper left hand corner of the decision, which was attached to the Proposed Findings and Conclusions, and not to the "*" sections. Accordingly, the "*" symbol appearing

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before the page references to the Swan Creek decision should be omitted.

- In addition, the citation to the Swan Creek case on page 109 should be "at 5."

Appropriate replacement pages are attached. We apologize for the inconvenience.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: Sean H. Lane
Kenneth C. Howard, Jr.
Leonard C. Greenebaum
Sean H. Lane

Its Attorneys

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Date: January 4, 1995

ATTACHMENT

221. It is, therefore, concluded that the statements contained in the Application, which represent that Robert and Frederick Smith will resign their then-current employment, are directly contrary to the three Smiths' belatedly disclosed intent to remain at their current positions as officers of Sinclair. As a direct misrepresentation or omission to the Commission can result, by itself, in disqualification, the Application provides sufficient evidence upon which to base a finding of misrepresentation and lack of candor against Four Jacks. See Swan Creek Communications v. FCC, 1994 U.S. App. Lexis 33055 at 7 (D.C. Cir. Nov. 22, 1994) (copy attached) (citing Old Time Religion Hour, Inc., 95 F.C.C.2d 713, 719 (Rev. Bd. 1983)).

222. The representations contained in the Application are particularly reliable evidence upon which to base a finding of lack of candor. First, the Application is the crucial cornerstone document upon which the grant of any construction permit or license is based, as Four Jacks knows. Second, Four Jacks admits that, even after the addition of this issue, it has never amended the representations contained in the Application relied upon above. T. at 2231; see Garden State Broadcasting Ltd. Partnership v. FCC, 996 F.2d 386, 394 n.9 (D.C. Cir. 1993) ("each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application") (quoting 47 C.F.R. § 1.65(a)).

show Sinclair to be the three Smiths "then-current employment").

230. David Smith's answers to these questions regarding the meaning of the pledge strongly suggested that David Smith would leave Sinclair if Four Jacks were granted the license for Channel 2. Thus, even when explicitly asked about the scope of his pledge, David Smith did not, at any time, reveal or even hint that he would remain at Sinclair, but instead he concealed this intention. Such unwillingness to reveal his true intentions to remain at Sinclair in the face of such questioning falls far short of the candor required of Commission applicants.

231. In sum, the testimony at the 1993 hearing confirmed that the three Smiths are employees of Sinclair in both name and deed. The "spontaneous, candid" testimony on this point by the three Smiths at the initial hearing cannot be squared with Four Jacks' position, after the addition of the issue, that the three Smiths are not employees of Sinclair. See, e.g., FJ28 at ¶ 6; Swan Creek, 1994 U.S. App. Lexis 33055 at 6 (applicant disqualified on misrepresentation grounds where impossible to reconcile candid prior testimony with contrary story offered at subsequent hearing). In fact, where, as here, such an "irremediable conflict" appears between records submitted to the Commission and testimony in the instant proceeding, lack of candor could be found even absent a subsequent evidentiary hearing. Swan Creek, 1994 U.S. App. Lexis 33055 at 7.⁴²

⁴² Here, of course, Four Jacks enjoyed a subsequent opportunity at evidentiary hearing to explain these conflicts, but it was wholly unable to do so.

expected to play procedural games with applicant to ascertain the truth); Swan Creek, 1994 U.S. App. Lexis 33055 at 7 (applicant's "recharacterization" of one of its proposals was an improper attempt to harmonize its two inconsistent applications). See Richardson Broadcast Group, 7 F.C.C. Rcd 1583, 1584 (applicant's evasiveness and willingness to withhold information disqualifying).⁴⁴

ii. Four Jacks' Claim That the Pledge to Resign Is Merely Inartful Is Not Credible

250. Four Jacks also now claims that it has not lacked candor before the Commission because the pledge was simply "inartfully worded." See, e.g., FJ26 at ¶ 5. It defies reason to believe this contention. The pledge contained in the Application was volunteered by Four Jacks without prompting from the Commission, opposing counsel or the Mass Media Bureau. It was subsequently repeated verbatim, by each of the three Smiths, in numerous other pleadings submitted to the Commission by Four Jacks. See, e.g., FJ2 at 1; FJ3 at 1; FJ4 at 1; SH45 at ¶ 6. The Smiths were also each cross examined on the pledge at the 1993 hearing, thus giving them numerous opportunities to clarify the meaning of the pledge. See e.g., T. at 1074, 1374.⁴⁵

⁴⁴ Relatedly, Four Jacks has provided no explanation for its changing story on this point. Indeed, it has none as the three Smiths' relationship to WBFF is not a fact difficult to discern or likely to change.

⁴⁵ To the extent that the Four Jacks' pledge is purposefully vague and the language "then-current employment" is used to avoid making any tangible commitment to the Commission, it is further evidence of Four Jacks' lack of candor in this proceeding. See RKO General, Inc. v. FCC, 670 F.2d 215, 230-31

251. The claim that the pledge was inartfully drafted also lacks credibility given that the three Smiths are seasoned broadcasters, all of whom claim credit in the Application for broadcast experience. These multiple broadcast station owners have previously appeared before the Commission in connection with other applications and thus have knowledge about the Commission's requirements and procedures. Cf. Swan Creek, 1994 U.S. App. Lexis 33055 at 7 n.8 (first time applicant disqualified for changing story before the Commission). Relatedly, Four Jacks is represented by experienced communications counsel. Omaha Channel 54 Broadcasting Group, 3 F.C.C. Rcd 870 (Rev. Bd. 1988) (Martin A. Leader and Kathryn R. Schmeltzer representing applicant Omaha Telecasters, Inc.); see Swan Creek, 1994 U.S. App. Lexis 33055 at 7, n.8 (first time applicant disqualified even though it did not have counsel for part of the proceeding).

252. Finally, the obligation to resign current employment as a condition of obtaining integration credit is well established and this language appears designed to meet this well known requirement. See Emission de Radio Balmeseda, Inc., 7 F.C.C. Rcd 3852, 3861 n.30 (Rev. Bd. 1992) (pledge to work full time as an integrated principal in station management must include a "specific, unambiguous pledge of total resignation from current full-time employment), aff'd, 8 F.C.C. Rcd 4335 (1993); Woods Communications Group, Inc., 7 F.C.C. Rcd 78, 79-81 (1991); See SH46 (Exh. 6 entitled "Integration"). Further, the Presiding

(D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982).

of the three Smiths' representations in this proceeding. T. at 2136.

c. Four Jacks' Remaining Explanations Are Dubious and Unworthy of Belief

264. On behalf of their contention that they have not lacked candor with the Commission, the Four Jacks principals have also made several unbelievable statements in their 1994 declarations. These statements do not support Four Jacks' position and are, in fact, "so out of touch with reality as to be classified as 'inherently incredible.'" Swan Creek, 1994 U.S. App. Lexis 33055 at 4-5 (citations omitted); see T. at 2113 (Robert Smith acknowledging that the three Smiths' story is "very hard to understand and to believe"). 265. First, the three Smiths attempt to minimize the probative value of their W-2 forms from Sinclair, which refer to them as employees of Sinclair, by claiming that they are required to receive such forms because they receive money from the company. David Smith conceded, however, that he understood that an employee of a company receives a W-2 form while a non-employee does not. T. at 1823-25. Thus, even though David Smith must have understood that the statement in his 1994 direct case testimony regarding why he receives a W-2 from Sinclair was incorrect, he submitted the statement anyway in an effort to exonerate Four Jacks on the added issue. This willingness to deceive the Commission undermines the credibility of Four Jacks' proffered explanations pertaining to the added issue and evidences a lack a candor in Four Jacks' pleadings before the Commission. Leflore

7. Ultimate Conclusions

278. The three Smiths claim that they have never made any pledge that requires them to resign from their positions as officers of Sinclair. Based on a simple reading of the Application, however, it is concluded that the pledge to resign their then-current employment, as understood by any reasonable person, would require the three Smiths to resign their employment at Sinclair. Thus, the pledge is irreconcilably inconsistent with the three Smiths' intent to remain at Sinclair. At the very least, the representations in the Application constitute a breach of Four Jacks' duty "to be fully forthcoming as to all facts and information relevant to a matter before the [Commission], whether or not that information was solicited." Silver Star, 3 F.C.C. Rcd at 6349; Fox River Broadcasting, 93 F.C.C. 2d at 129.

279. The lack of candor arising from the Application is confirmed by evidence adduced at the 1993 hearing. At the 1993 hearing each of the three Smiths described himself as an employee of Sinclair, a characterization directly contrary to the current claim that they are not employees of Sinclair. As Four Jacks' representations in its Application and the 1993 hearing contrast with completely different testimony at a subsequent hearing, Four Jacks has at a minimum lacked candor before the Commission. See Swan Creek, 1994 U.S. App. Lexis 33055 at 5; Richardson Broadcast Group, 7 F.C.C. Rcd 1583, 1585 (1992) (Commission's ability to rely on a applicants representation is "crucial" to functioning of regulatory process).


Certificate of Service

I, Ruth Omonijo, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Erratum to Proposed Findings of Fact and Conclusions of Law Submitted by Scripps Howard Broadcasting Company" to be hand delivered this 4th day of January, 1995 to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 218
Washington, DC 20554

Robert Zauner, Esq.
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554

Martin R. Leader, Esq.
Fisher Wayland Cooper Leader
& Zaragoza
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, DC 20006
Counsel to Four Jacks
Broadcasting, Inc.


Ruth Omonijo